

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAY MICHAUD,

Defendant.

NO. CR15-5351RJB

GOVERNMENT'S RESPONSE TO
DEFENDANT'S SECOND MOTION TO
COMPEL

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, Matthew P. Hampton, Assistant United States Attorney for said District, and Keith A. Becker, Trial Attorney, files this Response to Defendant Jay Michaud's Second Motion to Compel (Dkt. 113).

On December 11, 2015, the Court held a hearing on the defendant's first motion to compel and ordered the government to provide, among other things, a good faith estimate of "the number of charges arising from this investigation . . . the numbers, only numbers" to the defense. Dec. 11, 2015, Tr. at 34. On January 8, 2016, the government filed a response to the Court's order noting that the investigation remained ongoing and that, to date, at least 137 individuals were known to have been charged. Dkt. 109, p. 7. The government also noted in that because individual charging decisions are made at the discretion of United States Attorneys' Offices and/or appropriate state authorities, the information provided should not be understood to reflect a complete reporting of all

1 individuals who could be charged in connection with the investigation. *Id.*, p. 8. The
2 following day, defense counsel emailed the government requesting “a copy of [the
3 government’s] list of the 137 charged cases.” In an email dated January 12, 2016, the
4 government declined, noting first that no such list existed and second that it did not
5 believe it was obligated to provide further information.

6 In his motion, Michaud requests the “list of the pending NIT cases referenced in
7 the discovery.” Dkt. 113, p. 4. For at least two reasons, the government should not be
8 compelled to comply with this request.

9 *First*, even if Michaud were entitled to the “list” he demands (and he is not), it
10 does not exist. As the government has explained to defense counsel, the information
11 contained in the government’s discovery response reflected a good-faith estimate based
12 on aggregation of data reported by the various FBI field offices around the country
13 regarding the number of arrests/indictments that had to date resulted from this operation.
14 It did not include a list of cases because it did not have any such list. *Second*, even if his
15 motion were read more broadly as a request for the government to gather and provide the
16 list of cases he seeks, it should be denied because he cites no lawful basis for requiring
17 the government to do so.

18 Michaud offers two justifications for his request: the need to 1) verify the
19 accuracy of the government’s reported number of charged cases and 2) coordinate and
20 consult with defense counsel in other cases arising from this investigation. He cites no
21 legal basis that recognizes these bases as grounds for discovery, however.

22 What the court ordered (and the government provided) was a “good-faith
23 estimate” and not a “complete reporting of all individuals who could” be charged. Dec.
24 11, 2015, Tr. at 34; Dkt. 109 at 7. In any event, Michaud cites no law to support an
25 absolute right to verify every piece of information provided by the government – let alone
26 an avowed good faith estimate. Nor is the government aware of any constitutional or
27 other legal requirement that the government, upon demand of one defendant in one
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District, must gather and furnish information about other separately-charged defendants in other Districts so that they (or their counsel) can better coordinate with one another.

Michaud has also not made any showing that would justify requiring the government to expend the substantial effort required to gather and produce this information – which would likely require a poll of each U.S. Attorney’s office for each judicial district in the nation in order to request the name and case number for any defendant who may have then been charged as a result of the FBI operation. Even that would only address those cases charged federally. Gathering information about state prosecutions would likely require a nationwide poll of every state and local prosecuting authority that might have received a referral from this investigation.

To be sure, if the government were in possession of the information requested, it might well elect to turn it over regardless of whether it is required to do so. But Michaud cites no authority or justification in law for compelling the government to create it.

DATED this 19th day of February, 2016.

Respectfully submitted,

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Chief

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant.

s/Emily Miller
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